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12 || **UNITED STATES DISTRICT COURT**
13 ||
14 || **NORTHERN DISTRICT OF CALIFORNIA**

15 || CHRISTOPHER HINZE,) **CASE NO.: 3:22-cv-02944- AMO**
16 || vs.) (Removed from Alameda County Superior Court –
17 || Plaintiff,) Case No. 22CV009439)
18 ||)
19 || TESLA, INC., a Delaware Corporation;) **PLAINTIFF'S RESPONSE TO ORDER TO SH**
20 || and DOES 1 through 100, inclusive) **CAUSE WHY CASE SHOULD NOT BE**
21 ||) **TRANSFERRED**
22 || Defendants.) Action Filed: April 4, 2022
23 ||) Trial: May 5, 2025

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1 **I. INTRODUCION**

2 A plaintiff's choice of a valid forum is accorded great weight in determining whether to
 3 transfer venue under 28 U.S.C.A. § 1404. That premise is particularly true when the forum chosen
 4 is a valid forum pursuant to the federal venue statute, 28 U.S.C.A. § 1331. Here, Plaintiff
 5 Christopher Hinze has chosen to sue in the Northern District of California, where Tesla is not only
 6 physically present, but where it designed and manufactured the defective automobile that caused
 7 his injuries. Tesla thus satisfies both of the statutory tests for an appropriate venue, regardless of
 8 where Mr. Hinze resides or where the accident occurred.

9 Because Plaintiff has chosen an appropriate venue, the underlying question and the burden
 10 shift away from Plaintiff. Now, the question is whether permissive transfer is appropriate under 28
 11 U.S.C. § 1404, the venue transfer statute, and it becomes Tesla's burden to justify a transfer. *Id.*
 12 (“The defendant must make a strong showing of inconvenience to warrant upsetting the plaintiff's
 13 choice of forum. . . .”). The underlying facts here put such a showing out of reach. There is no
 14 basis for a transfer to the Eastern District of Virginia.

15 **II. FACTS**

16 On June 20, 2020, Plaintiff Christopher Hinze, a resident of Washington, D.C., was driving
 17 a 2017 Tesla Model S on highway I-495 in the State of Virginia. (Declaration of David C. Wright
 18 (“Wright Decl.”), ¶¶ 4-5.) While driving, Plaintiff activated the vehicle's Autopilot capability,
 19 which Tesla markets as “advanced hardware capable of providing Autopilot features, and full self-
 20 driving capabilities—through software updates designed to improve functionality over time.” (*Id.*
 21 ¶ 5.) Mr. Hinze alleges that the Autopilot feature failed in navigating a transition road between two
 22 freeways, and failed to slow down so that the vehicle could proceed safely into an upcoming curve.
 23 (*Id.*) As a result, the vehicle went into the undergrowth near the off-ramp and crashed into a tree
 24 40 feet off the road. (*Id.*) Mr. Hinze filed this lawsuit in state court and Tesla removed it to this
 25 District on May 18, 2022. Dkt. No. 1. At the all times during Tesla's design, marketing, and
 26 distribution of the subject vehicle, its headquarters was located in San Jose, California. Tesla
 27 manufactured the subject Model S, and all Model S vehicles built to the present day, at its
 28 manufacturing facility located in Fremont, Alameda County, California. (Wright Decl., ¶ 8.)

1 **III. ARGUMENT**

2 Transfer is improper here. First, Plaintiff has chosen a qualifying forum pursuant to the
 3 general venue statute, 28 U.S.C. § 1391. And second, there is no reason to overcome the
 4 presumption that comes with Plaintiff's choice of forum. An analysis of the factors courts use
 5 when considering transfer under the pertinent statute, 28 U.S.C. § 1404, fall far short of justifying
 6 transfer.

7 **A. The Parties Chose a Valid Forum**

8 Venue is governed by the general venue statute, 28 U.S.C. § 1391, and determined as of
 9 "the time an action is commenced." *Da Cruz v. Princess Cruise Lines, Inc.*, No. C-00-0867 TEH,
 10 2000 WL 1585695, at *3 (N.D.Cal. 2000); *see also Technograph Printed Circuits, Ltd. v. Packard*
 11 *Bell Elec. Corp.*, 290 F. Supp. 308 (C.D.Cal. 1968). Section 1391 provides that a civil action may
 12 be brought in "any judicial district in which any defendant resides, if all defendants are residents
 13 of the State in which the district is located" or in "a judicial district in which a substantial part of
 14 the events or omissions giving rise to the claim occurred, or a substantial part of property that is
 15 the subject of the action is situated." This lawsuit satisfies both tests.

16 First, this lawsuit was brought to this judicial district—where Tesla has designed and
 17 manufactured Tesla Model vehicles since 2012, including when Plaintiff filed this lawsuit in May
 18 2022—by Defendant itself when it removed this action from the Superior Court of California for
 19 Alameda County to this District. Dkt. No. 1. Plaintiff did not contest this removal. Of course,
 20 Tesla's unilateral decision in 2021 to re-locate its corporate headquarters to Texas does not
 21 eliminate the Northern District as an appropriate venue, because while residence under the venue
 22 statute once traditionally meant the "place of incorporation," the United States Supreme Court has
 23 since established that the general venue requirements provide a forum in any judicial district in
 24 which the "corporate defendant is doing business." *Pure Oil Co. v. Suarez*, 384 U.S. 202, 204
 25 (1966). Tesla's primary manufacturing facility for the Model S—and Model X—vehicles remains
 26 in Alameda County, within the Northern District. Congress amended § 1391 to provide that
 27 "[e]xcept as otherwise provided by law" and "[f]or all **venue purposes**," a corporation "shall be
 28 deemed to **reside**, if a defendant, in any judicial district in which such defendant is subject to the

1 court's personal jurisdiction with respect to the civil action in question." *TC Heartland LLC v.*
 2 *Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 262 (2017) (citing §§ 1391(a), (c)).

3 Section 1391 also supports venue in "a judicial district in which a substantial part of the
 4 events or omissions giving rise to the claim occurred . . ." This rule permits venue in multiple
 5 districts so long as "a substantial part of the underlying events took place in each of those districts."
 6 *Doe v. Epic Games, Inc.*, 435 F.Supp.3d 1024, 1039 (2020) (citing *Ward v. Certain Underwriters*
 7 *at Lloyd's of London*, No. 18-CV-07551-JCS, 2019 WL 2076991, at *5 (N.D.Cal. May 10, 2019)).
 8 To determine whether a "substantial part of the events" giving rise to the claim occurred in the
 9 forum, the court considers what "acts or omissions by the defendants give rise to the plaintiffs'
 10 claims." *United Tactical Sys. LLC v. Real Action Paintball, Inc.*, 108 F.Supp.3d 733, 752 (N.D.Cal.
 11 2015). The court should look to the entire sequence of events underlying the claim. *See Lee v.*
 12 *Corrections Corp. of Am.*, 525 F.Supp.2d 1238, 1241 (D. Hawai'i 2007).

13 The substantiality test is met here by Tesla's conduct in designing and manufacturing the
 14 Tesla Model S in this district. California products liability law holds that if a wrong occurs in the
 15 defective design or manufacture of a product, "it occurred at the time and in the place of design
 16 and manufacture; the place where it came to fruition is purely fortuitous." *See In re Paris Air Crash*
 17 *of March 3, 1947*, 399 F.Supp. 732, 740 (C. D. Cal. 1975). Not only does this venue satisfy the
 18 substantiality test, but the material facts that will decide the case—the facts establishing whether
 19 Tesla engaged in wrongful activity—occurred in California.¹ Because the Northern District
 20 satisfies both Section 1391 tests, it is an appropriate venue.

21 **B. Tesla Cannot Satisfy Its Burden to Overcome the Presumption Created by**
 22 **Plaintiff's Choice of Forum**

23 Once the plaintiff demonstrates that its choice of forum is sound, transfer is subject to a
 24 multi-factor balancing test, which includes: (1) the plaintiff's choice of forum; (2) the convenience
 25 of the witnesses; (3) convenience of the parties; (4) ease of access to the evidence; (5) familiarity
 26 of each forum with the applicable law, (6) feasibility of consolidation of other claims, (7) any local
 27

28 ¹ Plaintiff does not argue Virginia is not an appropriate forum; instead, he argues there is no legal
 basis for overriding his choice of an otherwise appropriate forum.

1 interest in the controversy, and (8) the relative court congestion and time of trial in each forum.
 2 *Carolina Cas. Co. v. Data Broadcasting Co.*, 805 F.2d 834, 843 (9th Cir. 1986). Of course, here
 3 it is Defendant that chose the Northern District when it removed this case and then did not seek to
 4 have venue transferred for two years of litigation. Assuming hypothetically that it had, however,
 5 Tesla would have to make a “strong showing of inconvenience to warrant upsetting the plaintiff’s
 6 choice of forum.”² *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir.
 7 1986). Even where these factors are equally balanced, the plaintiff’s choice stands. *See Byler v.*
 8 *Deluxe Corp.*, 222 F.Supp.3d 904-905 (S.D.Cal. 2016) (“This presumption is overcome only when
 9 private and public interest factors ‘clearly’ point toward an alternative forum.”)

10 The critical factor weighing against transfer is that both Plaintiff and Defendant have
 11 chosen a venue where they both have specific, identifiable, case-related contacts—Tesla was
 12 located here during the design and manufacture of the subject vehicle and at all times through the
 13 date of the accident, and Plaintiff’s harm originated here. *See In re Ferrero Litig.*, 768 F.Supp.2d
 14 1074, 1079 (S.D.Cal. 2011). Those direct connections to this forum weigh against transfer, and all
 15 the more so where there is no reason to disturb the parties’ choice. Because this forum has a direct
 16 connection to the underlying dispute, the court must defer to the parties’ venue choice.³

17 None of the other factors, individually or collectively, justify transfer given the parties’
 18 choice of forum. The convenience of the parties is served by having this litigation in the Northern
 19 District of California. Plaintiff asserts no inconvenience resulting from proceeding in this district,
 20

21 ² Here, Tesla has litigated this action in this court for two years without even seeking to change
 22 venue. Indeed, it was Tesla that chose this forum when it removed Plaintiff’s state court action to
 23 this Court. And while personal jurisdiction and venue are waivable defects, broadly speaking,
 24 subject-matter jurisdiction, personal jurisdiction, venue, abstention, and exhaustion are all issues
 25 of “judicial administration” that are appropriately decided early in the proceeding. *See, e.g.,*
Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50–51, 58 S.Ct. 459, 82 L.Ed. 638 (1938)
 26 (referring to the “long-settled rule of judicial administration that no one is entitled to judicial
 relief for a supposed or threatened injury until the prescribed administrative remedy has been
 exhausted”).

27 ³ There is no evidence here of forum-shopping, defined as “the same or similar case represented
 28 by the same law firm in a different district after receiving unfavorable rulings there.” *See, e.g.,*
Legal Force, Inc. v. Legalzoom.com, Inc., No. 2:18-cv-06147-ODW-GJS, 2018 WL 6179319, at
 *3 (C.D.Cal. Nov. 27, 2018). This case was removed to the Northern District by Defendant.

1 which contains at least three large international airports and is reachable from anywhere in the
 2 country. Moreover, Tesla is not inconvenienced by litigating here. It brought no venue motion
 3 after it removed Plaintiff's action. Indeed, many of its witnesses and its underlying data are
 4 physically located in the Northern District. (Wright Decl. ¶ 8.) The same is true for the convenience
 5 of witnesses. Regardless of where Tesla's witnesses are, they are just as likely to be
 6 inconvenienced having to fly to the east coast as to the west coast—Tesla has sparse east coast
 7 operations.

8 The location of the evidence does not favor transfer. Indeed, the parties have already
 9 completed all non-expert and expert discovery while the case was pending in this Court.

10 Nor does the law to be applied support transfer. While the parties dispute the law that
 11 should be applied to this case, the law considers a federal judge just as able to apply one state's
 12 law as another. *See Szegedy v. Keystone Food Prods., Inc.*, No. CV 08-5369 CAS (FFMx), 2009
 13 WL 2767683, at *7 (C.D.Cal. Aug. 26, 2009) ("The judges in each jurisdiction are fully capable
 14 of deciding issues arising under both California and Pennsylvania law."). Regardless of whether
 15 California or Virginia law applies, either court is equally able to apply it. This factor is neutral.

16 There are no potential efficiencies to be gained by consolidating this case with other claims
 17 currently pending in the Eastern District of Virginia. Nor would consolidation be fair or
 18 appropriate, given that this is a single-injury lawsuit brought on behalf of an individual, not a class.
 19 This factor strongly weighs against transfer. Nor does either district have any particular local
 20 interest in this case. The underlying accident occurred in Virginia; the conduct creating the defect
 21 that allegedly caused the accident occurred in California. Neither gives one district or the other an
 22 advantage in the analysis, much less a substantial one.

23 Finally, courts have noted the minimal weight that judicial efficiency has on the venue
 24 transfer analysis, and all the more so when it is the only identifiable factor in favor of transfer. *See*
 25 *Royal Queen Tex Enters. v. Sara Lee Corp.*, No. C-99-4787 MJJ, 2000 WL 246599, at *8 (N.D.Cal.
 26 Mar. 1, 2000). Any theoretical efficiency on this score is immaterial.

27 As such, there are simply no relevant factors that support transfer. On the contrary,
 28 numerous factors support this case remaining in the Northern District of California.

1 DATED: October 25, 2024

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McCUNE LAW GROUP

BY: /s/ David C. Wright

David C. Wright
Attorney for Plaintiff
CHRISTOPHER HINZE

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 25, 2024, I filed the foregoing document entitled

3 **PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE WHY CASE SHOULD NOT**
4 **BE TRANSFERRED** with the clerk of court using the CM/ECF system, which will send a
5 notice of electronic filing to all counsel of record in this action.

6

7 /s/ David C. Wright

8 David C. Wright

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